IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO.112 OF 2006

Smt.Monali Ramesh Jadhav .. Applicant

versus

Haresh Nanikram Avtarmani .. Respondent

...

Ms.P.N. Diwan i/b Balkrishna D. Joshi for the applicant.

CORAM : D.G. KARNIK, J

DATED : 5th October 2006

P.C.:

Heard counsel for the applicant.

1. This application is filed for transfer of the Miscellaneous Application no.3 of 2005 from the Family Court, Bandra to the Family Court, Pune.

2. The applicant is a former wife of the respondent. After the divorce, she has remarried and the present application has been filed by her after the remarriage.

3. The petitioner and the respondent filed a consent Marriage Petition no.A-1524 of 2002 in the Family Court at Bandra for divorce by mutual consent. In the said petition, consent terms were filed between the parties from 16th October 2004, regarding custody of the son. Under the consent terms it was agreed that the custody of the son would remain with the applicant herein and the respondent husband would have a right to access to the son on every Sunday and for one entire weekend once in a month. According to the respondent, the petitioner committed breach of the consent terms and she intended to shift to Pune along with the son making it impossible for the respondent to have access to the son. He therefore filed Misc. Application no.50 of 2005 in the Family Court Bandra for a direction that the applicant should obey the consent decree and should not shift their son from Bombay to Pune. The present petition has been filed by the petitioner wife for transfer of the said Miscellaneous Application from the Family Court at Bombay to the Family Court at Pune.

4. I am not inclined to entertain the application for transfer for reasons more than one.

5. Firstly, the parties had chosen the Family Court at Bandra as the forum of choice for their marriage petition. The consent order was passed by the Family Court at Bandra. It is the respondent's case that the applicant is intending to commit a breach of the consent decree and shift to Pune thereby denying the respondent access to the son. The directions can obviously be given only by the Court which passed the consent decree. i.e. the Family Court at Bandra.

6. The present proceedings are not matrimonial proceedings and therefore the decision of the Supreme Court about the convenience of the wife to be looked into do not apply.

7. The applicant has remarried. The applicant is therefore not a helpless woman who is unable to travel. In fact, by the consent decree of the Family Court, Bandra, Mumbai, she obtained the custody of the son and impliedly undertook that the respondent would have access to the son at Bombay on every Sunday and for one whole weekend in a month. In the facts and circumstances of the case, it would not be proper to transfer the proceedings from the Family Court at Bandra to the Family Court at Pune.

8. Hence, the application is rejected summarily.

(D.G. KARNIK, J)